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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BAKER RANCHES, INC., a Nevada
Corporation; DARWIN C. WHEELER;
OWEN L. AND PATRICIA T. GONDER;
DAVID JOHN ELDRIDGE AND RUTH,
ELDRIDGE, as Co-Trustees of the DAVID
JOHN ELDRIDGE AND RUTH ELDRIDGE
FAMILY LIVING TRUST, dated January
31, 2007; ZANE JORDAN; and JUDEE
SCHALEY,

Plaintiffs,

v.

DAVID BERNHARDT, in his official
capacity as Secretary of the United States
Department of the Interior; the UNITED
STATES DEPARTMENT OF THE
INTERIOR; MICHAEL T. REYNOLDS, in
his official capacity as Acting Director of
the National Park Service; the NATIONAL
PARK SERVICE; and JAMES WOOLSEY,
in his official capacity as Superintendent
of the Great Basin National Park,

Defendants.

Case No. 3:18-cv-261-RFB-CBC

**STIPULATED
FINDINGS OF FACT**

1 The Plaintiffs, by and through their undersigned attorneys, Debbie
2 Leonard of Leonard Law, P.C., and Brandon L. Jensen of the Falen Law Offices,
3 LLC, and the Defendants, by and through their undersigned attorney David L.
4 Negri, of the United States Department of Justice, hereby stipulate and agree to
5 the following findings of fact that shall govern this case.

6 **FINDINGS OF FACT:**

7
8 1. What is now Great Basin National Park was previously managed by
9 the United States Forest Service as part of the Nevada National Forest, which
10 was withdrawn from the public domain and created on February 10, 1909.

11 2. The Nevada National Forest was later incorporated into the
12 Humboldt National Forest on October 1, 1957.

13 3. Great Basin National Park was created on October 27, 1986 by
14 Public Law 99-565 (“the Great Basin National Park Enabling Act”).

15 4. Upon creation of Great Basin National Park, the National Park
16 Service requested that the Nevada State Engineer provide an assessment of all
17 existing water rights within the limits of and in the general vicinity of Great
18 Basin National Park.

19 5. On May 8, 1987, the Nevada Division of Water Planning issued a
20 document entitled Great Basin National Park Water Right Assessment (“the
21 Water Right Assessment”).

22 6. At the time of its issuance, the Nevada Division of Water Planning
23 sent a copy of the Water Right Assessment to the National Park Service.

24 **Snake Creek & Snake Creek Pipeline**

25 7. Snake Creek flows generally west to east, with its headwaters
26 arising in what is now Great Basin National Park in Nevada and flowing
27

12. The priority date of the Snake Creek Plaintiffs' water rights is at least 1880.

13. The United States is not a successor to any party to the Snake Creek Decree.

14. In 1962, the Snake Creek Irrigation Company constructed a three-mile concrete pipeline to transport water through a losing reach of Snake Creek.¹

15. The Snake Creek pipeline was constructed on unsurveyed federal lands.

16. In 1903, statutory administrative procedures to appropriate water were first established. Accordingly, after 1903, the exclusive method of obtaining a new surface water right in Utah is through filing an application to appropriate with the State Engineer and ultimately obtaining a certificate of beneficial use.

17. A diligence claim is a claim to the use of surface water where the use was initiated prior to 1903. In 1962, the successors-in-interest to the rights of the plaintiffs in the Snake Creek Decree and the predecessors to the Snake Creek Plaintiffs, filed diligence claims in Utah based on the rights adjudicated in the Snake Creek Decree, identified as Claims D973, D974, D975 and D976.

¹ A “losing reach” is a part of a stream or river that loses water as it flows downstream. The water infiltrates into the ground because the water table is below the bottom of the stream channel.

1 18. In response to the diligence claims, the Utah State Engineer
2 assigned Water Rights Nos. 18-249, 18-250, 18-251, and 18-257 for the
3 diligence claims.

4 19. On February 19, 1962, the Forest Service issued a special use
5 permit to the Snake Creek Irrigation Company for the construction and
6 maintenance of the Snake Creek pipeline. The pipeline was located entirely
7 within the State of Nevada.

8 20. On March 1, 1978, the Forest Service issued a second special use
9 permit to the Snake Creek Irrigation Company for the construction and
10 maintenance of the Snake Creek pipeline. The second special use permit was
11 amended on January 2, 1985. The second special use permit expired on
12 February 28, 1986. No further permits were issued by the Forest Service.

13 21. Since creation of Great Basin National Park in 1986, the Park
14 Service has not issued any special use permit for the pipeline.

15 22. Water has flowed through the pipeline every year since creation of
16 Great Basin National Park.

17 23. In 2016, the Park Service denied the request of the Snake Creek
18 Plaintiffs to perform maintenance and repairs to the pipeline. According to the
19 Park Service, no further maintenance or repairs of the pipeline will be
20 permitted until environmental review is accomplished pursuant to the National
21 Environmental Policy Act ("NEPA") of 1970 and a new special use authorization
22 is issued by the Park Service.

23 24. The pipeline has been leaking water since at least 2016.

24 25. While the Snake Creek watershed was addressed in the 1910
25 action, a general water rights adjudication has never taken place in Utah or
26 Nevada on the watershed.
27

26. The Snake Creek Plaintiffs, pursuant to their Utah state law-based water rights, divert water from Snake Creek from a point within Utah, downstream and outside the boundary of Great Basin National Park. The authorized places of use are located within Millard County, Utah, downstream and outside the boundary of Great Basin National Park.

Baker Creek

27. Baker Creek flows generally west to east, with its headwaters arising in what is now Great Basin National Park in Nevada. The distance from Baker Creek's headwaters to the boundary of Great Basin National Park is approximately six miles.

28. Plaintiffs Baker Ranches, Inc., David John Eldridge and Ruth Eldridge, as Co-Trustees of The David John Eldridge And Ruth Eldridge Family Living Trust, dated January 31, 2007, Zane Jordan, and Judee Schaley (collectively, “the Baker Creek Plaintiffs”) hold water rights to divert water from Baker Creek for irrigation of farming and ranching lands in White Pine County, Nevada. These lands are located from four to eight miles from Great Basin National Park’s boundary.

29. On October 16, 1934, the Seventh Judicial District Court in and for White Pine County, Nevada entered Findings of Fact, Conclusions of Law, and Decree in the *Matter of the Determination of the Relative Rights in and to the Waters of Baker and Lehman Creeks and Tributaries in the County of White Pine, State of Nevada*, which was amended *nunc pro tunc* on February 3, 1950 (“Baker-Lehman Decree”). The Baker-Lehman Decree adjudicated the respective rights to the waters of Baker and Lehman Creeks and their tributaries.

1 30. The Baker Creek Plaintiffs hold the following water rights to Baker
2 Creek under the Baker-Lehman Decree with the following priority dates:

3 a. Plaintiff Baker Ranches, Inc.'s share of Proof of
4 Appropriation No. 01066 is appurtenant to 1,751.87 acres and has
5 multiple priority dates ranging from 1872 to 1904.

6 b. Plaintiff David John Eldridge and Ruth Eldridge
7 Family Living Trust's ½ share of Proof of Appropriation No. 01066
8 is appurtenant to 8.8 acres and has a priority date of 1872.

9 c. Plaintiffs Zane Jordan's and Judee Shaley's share of
10 Proof of Appropriation No. 01066 is appurtenant to 7.13 acres and
11 has a priority date of 1876.

12 31. The Baker-Lehman Decree provides, *inter alia*, the following:

13 That the Judgment and Decree to be hereinafter entered should
14 provide that each and every water user of the Baker and Lehman
15 Creeks stream system and its tributaries, and each of agents,
16 attorneys, servants, employees, and their respective successors in
17 interest, and each and every person acting in aid or assistance of
18 said parties, or either or any of them, be perpetually enjoined and
19 restrained as follows, to-wit:

20 (a) From at any time diverting or using or preventing or
21 obstructing the flow, in whole or in part, in or along its
22 natural channel, of any of the water or said stream system,
23 except to the extent and in the amount and in the manner
24 and at the time or times fixed by this Decree and allocated,
25 allowed, prescribed, and determined to such parties
26 respectively, and as may be allowed in the permits which
27 have been or may hereafter be granted by the State Engineer
28 of the state of Nevada.

29 (b) From diverting from the natural channel and from using any
30 of the said water for irrigation or any other purpose in excess
31 of the amount specifically allotted to or for said party herein
32 and fixed by this Decree, or in excess of the specified
33 allotment under such permit or permits so heretofore
34 granted or which may hereafter be granted by said State
35 Engineer.

36 (c) From diverting from the natural channel and from using any
37 of the said waters in any other manner or for any other
38 purpose or purposes or upon any other land or lands or in
39 any other amount than as provided and prescribed by the

terms or this Decree or by any such permit so granted by said State Engineer.

(d) From diverting from the natural channel and from using any of the said water at any other time or times than as specified and provided by the terms of this Decree or by any such permit so granted by the said State Engineer.

(e) From in any manner meddling with, opening, closing, changing, injuring, or interfering with any headgates, weirs, water-boxes, flumes, or measuring devices, or either or any of them, placed, installed, established, or approved by said State Engineer or by his authority or direction, unless such act be done with the permission or authority of the water commissioner or commissioners on said stream system during the period of his regulation or control of said water, or, if not done during such period of his control, then by virtue of the allowances, authority, terms, and provisions of this Decree or by a permit so granted by said State Engineer.

43. The point at which the Baker Creek Plaintiffs divert water from Baker Creek is approximately four miles downstream of the Great Basin National Park boundary and outside Great Basin National Park.

44. The places of use of the Baker Creek Plaintiffs' water rights are in White Pine County, Nevada, approximately 4.5 to 8.5 miles outside the boundary of Great Basin National Park.

RESPECTFULLY SUBMITTED this 25th day of September 2019.

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IT IS SO ORDERED:



THE HONORABLE RICHARD E. BOULWARE, II
UNITED STATES DISTRICT JUDGE

DATED: October 22, 2019

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